



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel an Order of Possession, to clarify the pad rental amount, and to recover the filing fee from the landlord for the cost of this application.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel the 10 Day Notice to End Tenancy under Section 39(4) of the *Manufactured Home Park Tenancy Act*
- To clarify if a previous pad rent increase is effective pursuant to section 35 (1) of the *Manufactured Home Park Tenancy Act*
- Whether the tenant is entitled to a Monetary Order under section 65(1) of the *Act* to recover the filing fee.

Background and Evidence

The tenant purchased her manufactured home and began a verbal tenancy for pad rental in December 1995. In January 2007 her pad rent was increased to \$547.50, payable on the 1st of each month, and in September 2007 she received notice that her pad rental would be increased effective January 2008 to \$567.76.

The tenant testified that she paid the increased pad rental of \$567.76 January 1, 2008 and continued until April 1, 2008.

After receiving a copy of a decision that was issued to another tenant of the mobile home park in April 2008, which stated that the rent increase for 2008 did not comply with the requirements of the *Manufactured Home Park Tenancy Act*, this tenant took it upon herself to deduct the amount of rent increase she had already paid for January through April 2008 at 20.26 per month, for a total amount of \$81.04 and paid her old rent of \$547.50 from May 1, 2008 through to April 1, 2009.

The landlord issued another notice of rental increase some time in 2008, effective August 2008, however there was not enough documentary evidence submitted by either party to make a determination on the merits of this notice separate from the January 2008 rental increase.

The landlord testified that he issued a 10 Day Notice to End Tenancy in response to the tenant refusing to pay her increased pad rental and is requesting a \$20.00 late payment fee for unpaid rent amounts.

Analysis

If a landlord issues a rental increase that is not in compliance with Section 35 of the *Manufactured Home Park Tenancy Act*, then the tenant must apply for dispute resolution to have the rental increase reviewed. In this case the tenant assumed that because another tenant from the same park applied to dispute resolution, and received a decision that the rent increase was not valid, that the decision would apply to her as well. This other tenant did not file a class action application, nor did any of the other

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tenants of this Manufactured Home Park apply to join a dispute application, which means the decision applies only to the person who applied for dispute resolution.

As stipulated in Section 20 of the *Manufactured Home Park Tenancy Act*, a tenant must pay rent when it is due, whether or not the landlord complies with this *Act*, and by failing to pay the increased rental amount; the tenant has violated the *Act*.

As the tenant failed to apply, within the regulated time frame, to dispute the rental increase which was to be effective January 1, 2008, I find that her pad rent was duly increased to \$567.76 per month, and that her rent is sixteen (16) months in arrears at \$20.26 per month from January 1, 2008 inclusively to April 1, 2009, for a total of \$324.16.

As I have found the January 1, 2008 rental increase to be valid, the notice to increase the pad rent effective August 2008 would be void as it does not meet the twelve (12) month requirement as stipulated in Section 35(1) of the *Manufactured Home Park Tenancy Act*.

The landlord has charged a \$20.00 late payment fee, however in the absence of a written tenancy agreement which provides for such a fee, this fee is in violation of section 5(2) of the *Manufactured Home Park Tenancy Regulations*, and I find that this fee cannot be charged to the tenant.

The landlord agreed to withdraw his 10 Day Notice to End Tenancy for unpaid rent if the tenant was ordered to pay the rental arrears from January 1, 2008 to April 1, 2009 of \$324.16.

The landlord advised that he will be proceeding with a rental increase for January 2009. I cautioned the landlord to ensure that any rent increases are done in compliance with



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the *Act*, and advised him that the *Act* does not provide for a retroactive rent increase, so he would have to provide the tenant with proper three (3) months notice before a rent increase could be effective.

The tenant is requesting to recover the filing fee from the landlord. As I have found in favour of the landlord's request for a monetary claim, I find that the tenant was not successful in her application and must suffer the cost of this application herself.

Conclusion

I Hereby Order that the 10 Day Notice to End Tenancy, issued in March 2009, is cancelled, and is of no force or effect.

I find that the landlord's claim meets the criteria of the *Act* and order this monetary claim as follows:

| | |
|--|-----------------|
| Unpaid Rent of \$20.26 per month for 16 Months (January 2008 inclusively through to April 2009) | \$324.16 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$324.16 |

I hereby grant the landlord a Monetary Order under section 60 of the *Manufactured Home Park Tenancy Act* for \$324.16. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The landlord's copy of this decision is accompanied by the Monetary Order which must be served on the respondent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 08, 2009.
